

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States District Court
Southern District of Texas
FILED

MAY 25 2004

Michael A. Milby, Clerk.

Mark NEWBY,
Plaintiff,

v.

ENRON CORP., et al.,
Defendants.

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Consolidated Lead No. H-01-3624

AMERICAN NATIONAL
INSURANCE COMPANY, et al.,
Plaintiffs,

vs.

ARTHUR ANDERSEN, L.L.P., et al.
Defendants.

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Civil Action No. G-03-967

AMERICAN NATIONAL
INSURANCE COMPANY, et al.,
Plaintiffs,

vs.

J. P. MORGAN CHASE & COMPANY,
Defendant.

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Civil Action No. G-02-0299

AMERICAN NATIONAL INSURANCE
COMPANY; et al.,
Plaintiffs

vs.

CITIGROUP, INC; et al.
Defendants.

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Civil Action No. G-02-723

AMERICAN NATIONAL INSURANCE,
et al.,
Plaintiffs,

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v. § Civil Action No. G-02-463
§
LEHMAN BROTHERS HOLDINGS, INC., §
et al., §
Defendants. §

WESTBORO PROPERTIES, LLC §
and STONEHURST CAPITAL, INC. §
Plaintiffs §
vs. § Civil Action No. H-03-1276
§
CREDIT SUISSE FIRST BOSTON, INC., §
et al., §
Defendants. §

AMERICAN NATIONAL INSURANCE §
COMPANY, et al., §
Plaintiffs §
vs. § Civil Action No. G-03-0481
§
ROYAL BANK OF CANADA §
Defendant. §

WESTBORO PROPERTIES, L.L.C. §
and LUCELIA FOUNDATION, INC. §
Plaintiffs §
vs. § Civil Action No. H-03-5424
§
JP MORGAN CHASE & COMPANY §
Defendant. §

**RESPONSE BY PLAINTIFFS AMERICAN NATIONAL, ET AL., AND
WESTBORO PROPERTIES, ET AL, IN OPPOSITION TO BANK
DEFENDANTS' MOTION FOR MODIFICATION OF SCHEDULING ORDER**

Plaintiffs in the above styled actions file this Response in Opposition to The Bank
Defendants' Motion for Modification of Scheduling Order.

DEPOSITIONS SHOULD NOT BE DELAYED

The Banks provide no legitimate justification for a blanket delay of depositions. Only fact witnesses are scheduled for deposition during June through August 2004. These witnesses, accordingly, will be examined only on matters within their personal knowledge. *See* Fed. R. Evid. 602. Nowhere in the Bank's Motion to modify the scheduling order, or in over two hundred pages of exhibits tendered in support of the Motion, do the Banks explain why any of the witnesses scheduled for June-August depositions must examine Enron or Arthur Andersen documents in order to testify on personal knowledge about matters that occurred years ago.

The Federal Rules of Civil Procedure contemplate that all types of discovery – interrogatories, requests for production, depositions – may be pursued simultaneously. If a rule required that every document be produced prior to depositions, the time from the filing of a typical lawsuit to judgment would be greatly increased, and the instant lawsuit would never end.

The Banks are disingenuous in claiming "surprise" that not every Enron and Arthur Andersen document will be available by June 1, 2004. If the Banks are truly surprised, they are the only ones. The sheer magnitude of the production virtually guaranteed that the document production and preparation would not be completed by June 1. If the Banks were monitoring the document production as claimed, they should have determined their purported "need" to postpone the depositions long ago. Plaintiffs have arranged their schedules and purchased transportation to attend the scheduled depositions. Changing the deposition schedule at this late date would therefore work a

hardship on Plaintiffs. Considering all the relevant factors, the deposition schedule should not be modified.

PRAYER

Plaintiffs pray that the Bank Defendants' Motion for Modification of the Scheduling Order be denied.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this the 24th day of May, 2004, a copy of the forgoing document was served on all counsel of record by posting in PDF format to www.esl13624.com.

By: 

Steve Windsor

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Consolidated Lead No. H-01-3624

ORDER

Before the Court is the Bank Defendants' Motion for Modification of Scheduling Order. The Court has considered the Motion and Response and concludes that the Motion is without merit.

It is, therefore, the ORDER of the Court that Bank Defendants' Motion for Modification of Scheduling Order is hereby DENIED.

DONE this ____ day of May, 2004.

MELINDA HARMON
UNITED STATES DISTRICT JUDGE